

Message Text

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ORIGIN L-03

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DRAFTED BY L/ M/ SCA: KEMALMBORG: MA

5/24/73 EXT 22350

APPROVED BY L/ M/ SCA: KEMALMBORG

JUSTICE: MRSTEIN (SUB)

EA/ PHL: MR. WALSH

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P 241618 Z MAY 73

FM SECSTATE WASHDC

TO AMEMBASSY MANILA PRIORITY

C O N F I D E N T I A L STATE 099858

E. O. 11652, GDS

TAGS: PFOR, RP

SUBJECT: EXTRADITION TREATY

REF: MANILA 6026 AND 6069

1. RE PARA 1 A MANILA 6026, DEPARTMENT UNABLE TO ACCEPT ANY ADDITION TO ARTICLE 5 OF 5/14 DRAFT. WE WILL HAVE TO BE INFORMED IN DETAIL ON PHIL PROCEDURES FOR SCREENING REQUESTS TO U. S. AND ON OUTCOME DISCUSSION OTHER POINTS DESIGNED TO PROVIDE PROCEDURAL PROTECTION. THESE WOULD THEN HAVE TO BE DISCUSSED WITH DEFENSE DEPARTMENT AND JUSTICE DEPARTMENT. OUR INITIAL REACTION IS THAT VERSION IN MANILA 6069 EITHER GOES WITHOUT SAYING OR ELIMINATES DISCRETION. WHAT WOULD BE SO ABNORMAL AS TO PERMIT DISCRETION?

2. RE PARA 1 B MANILA 6026, WE UNCLEAR WHAT INTERPRETATION UNDER U. S. LAW WOULD BE GIVEN TO QTE IN FURTHERANCE OF THAT OFFENSE UNQTE. AS WE UNDERSTAND IT CONSPIRACY IS ELIMINATED, AND EXTRADITABLE OFFENSE MUST BE QTE CONCEIVED OR COMMENCED UNQTE PRIOR TO TREATY. OVERT ACT AFTER TREATY WHICH THEN WOULD BE REQUIRED TO MAKE OFFENSE EXTRADITABLE THEN WOULD HAVE TO AMOUNT TO
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ONE OF SUBSTANTIVE ELEMENTS OF OFFENSE SO THAT OFFENSE WOULD NOT HAVE BEEN CONSUMMATED PRIOR TO TREATY. IF THIS IS SO, QTE IN FURTHERANCE UNQTE PHRASE SEEMS TO ADD NOTHING. IF IT IS INTENDED TO MEAN THAT ANY OVERT ACT AFTER THE TREATY WHICH QTE FURTHERS UNQTE AN OFFENSE CONSUMMATED BEFORE TREATY MAKES THE CONSUMMATED OFFENSE EXTRADITABLE WE DON' T KNOW WHAT SUCH AN ACT WOULD BE. WHAT WOULD BE AN EXAMPLE OF AN OVERT ACT FURTHERING AN OFFENSE WHICH IS NOT AN ELEMENT OF OFFENSE?

3. RE PARA 1 C MANILA 6026, WE DO NOT SEE ANY PROBLEM IN TAKING EXCHANGE OF NOTES APPROACH TO EXTRAORDINARY TRIBUNAL PROBLEM. IT WOULD BE PART OF DOCUMENTS ON WHICH SENATE APPROVAL SOUGHT AND PUBLISHED IN TIAS WITH TREATY.

4. RE PARA 3 MANILA 6026, INSERTION OF QTE RESPONSIBLE OFFICER AUTHORIZED BY LAW UNQTE NOT ACCEPTABLE. PHIL REPRESENTATIVES SHOULD UNDERSTAND THAT USG WILL INSIST AT MINIMUM ON ALL USUAL PROCEDURAL SAFEGUARDS AGAINST ABUSE OF EXTRADITION PROCESS.

5. RE PARA 4 MANILA 6026, STATE AND JUSTICE DEPARTMENTS UNABLE AND UNWILLING TO ASSUME OBLIGATION OF TRANSPORTING FUGITIVE TO POINT OF INTERNATIONAL DEPARTURE. THIS UNIFORMLY RESPONSIBILITY OF REQUESTING STATE. RUSH

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